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REQUEST FOR THE INCLUSION OF AN ADDITIONAL ITEM IN THE PROVISIONAL AGENDA OF THE FORTY-FIFTH SESSION

CONCILIATION RULES OF THE UNITED NATIONS

Letter dated 6 July 1990 from the Permanent Representative of Guatemala to the United Nations addressed to the Secretary-General

I have the honour to request you, in accordance with rule 13 (e) of the rules of procedure of the General Assembly, to include in the provisional agenda of the forty-fifth session a new item entitled "Conciliation rules of the United Nations".

In accordance with rule 20 of the rules of procedure of the General Assembly, an explanatory memorandum is annexed to this request, together with a draft resolution of the Assembly with two enclosures.

Given its essentially legal nature, I consider that this item should be allocated to the Sixth Committee of the General Assembly.

(Signed) Francisco VILLAGRAN DE LEON
Ambassador
Permanent Representative

ANNEX I

Explanatory memorandum

1. The Government of Guatemala considers that it is appropriate to facilitate and promote recourse to conciliation as an ad hoc means of settling disputes between States. It feels that it would be useful to make general use of the conciliation rules adopted by the Institute of International Law in 1961, which apparently have not yet been accepted as international practice. It also seems to be desirable to add certain other provisions to the body of rules which traditionally govern conciliation between States.

2. For the achievement of these aims, the Government of Guatemala recommends that the General Assembly should extend to the field of international public law the flexible system which it introduced into the field of private law by adopting, in 1980, resolution 35/52. In that resolution, the Assembly recommended the use of the Conciliation Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. These rules constitute a model set of norms which may be adopted by any party to a commercial dispute following a simple proposal accepted by the other party. The parties may introduce any modifications to the rules to facilitate a settlement by conciliation.

4. The Government of Guatemala considers that the international community can only benefit if the same machinery is applied, mutatis mutandis, to relations between States.

5. The addition of this new machinery to the already existing means of peaceful settlement has both formal and substantive advantages.

6. From the formal viewpoint, the existence of a model body of norms which States can adopt through a bilateral agreement incorporating those norms by a simple reference would considerably simplify the elaboration of ad hoc conciliation agreements, especially if that set of norms had been endorsed and recommended by the General Assembly.

7. As for the substance, the model norms which the General Assembly would recommend to States would represent a step forward, since they would contain the rules adopted by the Institute of International Law and certain new provisions which, in the opinion of the Guatemalan Government, would make conciliation a more effective instrument for the settlement of disputes. Undoubtedly, the model norms would receive valuable additions suggested by other Member States during the consideration of the item by the General Assembly.

8. In a more specific field, namely, that of the rules of international law codified by the United Nations, the machinery suggested by the Government of Guatemala would help to fill a gap. The Optional Protocols on the settlement of disputes which accompany the Vienna Conventions on diplomatic and consular

relations make provision for prior recourse to conciliation but give States no indication of how such conciliation is to be conducted (see article III of each Protocol). This gap could be filled by the model norms.

9. In this memorandum, the Government of Guatemala proposes specifically that the General Assembly should adopt the attached draft resolution with its two annexes. In view of the comments already made, these texts are self-explanatory. Appendix I is the text of the rules of conciliation which, for States, would fulfil, mutatis mutandis, the same functions as the rules annexed to resolution 35/52 fulfil in the commercial field. Appendix II contains an explanation of how the rules would be applied.

10. The draft rules are based not only on the work of the International Law Institute already referred to but also on the main multilateral conventions which have been adopted with regard to conciliation: the Convention of The Hague on the Pacific Settlement of International Disputes of 1907, the General Act of 1928, revised by the General Assembly in 1948, the Pact of Bogotá of 1948, the European Convention for the Settlement of Disputes of 1957, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States together with their respective rules of conciliation, and the annexes relating to conciliation of the Convention on the Law of Treaties and the United Nations Convention on the Law of the Sea. Guatemala has also taken into account the pertinent recommendations made by the Assembly of the League of Nations in 1922 and, of course, the useful work of legal writers who have dealt with the subject of conciliation. As already pointed out, Guatemala has also introduced new provisions. These include some provisions taken from the UNCITRAL rules and others which include the conciliation procedure recommended by the Secretary-General of the United Nations who, in the opinion of the Guatemalan Government, can provide valuable organizational and administrative assistance to States wishing to settle their disputes by ad hoc conciliation agreements. This association of the Secretary-General in the settlement of disputes by conciliation is in line with paragraph 20 of the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this field, annexed to General Assembly resolution 43/51 of 5 December 1988.

ANNEX II

Draft resolution

Application of United Nations rules for the conciliation of disputes between States

The General Assembly,

Recognizing the value of conciliation as a method of amicably settling disputes arising in the context of relations between States,

Convinced that the establishment of international rules of conciliation incorporating the results of the most recent scientific studies and experience in the field of international conciliation, together with certain innovations which should be made in the traditional practice in this field, could contribute to the development of harmonious relations between States,

1. Recommends the application of the United Nations rules for the conciliation of disputes between States, the text of which constitutes appendix I, in any case where a dispute arises between States which it has not been possible to settle by direct negotiations and which the parties wish to settle by purely amicable means.

2. Requests the Secretary-General to take appropriate measures to circulate to all Governments the text of the present resolution, together with those rules and the explanatory commentary on the application of the rules.

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APPENDIX I

UNITED NATIONS RULES FOR THE CONCILIATION OF DISPUTES BETWEEN STATES

CHAPTER I

APPLICATION OF THE RULES

Article 1

1. These rules apply to the conciliation of disputes between States which it has not been possible to settle by means of negotiation or amicable methods of settlement other than conciliation, whether the disputes are of a legal nature or not. These rules do not apply, however, to disputes of a purely legal nature in which no questions of responsibility or reparation arise and in which there is no disagreement as regards the facts.

2. The States applying these rules may at any time agree to exclude or amend any of their provisions. The State initiating the conciliation may propose an amended version of the rules. The State to which these rules are proposed may do the same.

CHAPTER II

INITIATION OF THE CONCILIATION PROCEEDINGS

Article 2

1. The State which initiates conciliation proceedings in accordance with these rules shall send the other State a written invitation stating that a process of conciliation is being conducted in accordance with these rules, and identifying and describing the subject of the dispute. In the invitation, the State initiating the conciliation proceedings shall indicate the amendments it proposes to the rules, if any, and its choice as regards the number of conciliators. If the conciliation is to be entrusted to a sole conciliator and the dispute involves facts, the invitation shall state whether the conciliator is to have the powers which article 25 of these rules confers on conciliation commissions; the invitation shall also indicate the language or languages which are to be used in the conciliation proceedings and also the linguistic or other services which are to be provided to the conciliator or conciliators.

2. For the preparation of the invitation, the State initiating the proceedings may request the assistance and advice of the Secretary-General of the United Nations.

3. The conciliation proceedings shall begin as soon as possible after the State to which the invitation has been sent has accepted it or, if it is not accepted, the States have agreed to apply an amended version of these rules.

CHAPTER III

CASES IN WHICH MORE THAN ONE STATE HAS THE SAME INTEREST WITH REGARD TO THE DISPUTE

Article 3

When more than two States are involved in the same dispute, the States which have the same viewpoints and the same interest shall be considered and shall act jointly as a single party.

CHAPTER IV

NUMBER OF CONCILIATORS

Article 4

There may be a sole conciliator, three conciliators or five conciliators. In the two latter cases the conciliators shall form a commission.

CHAPTER V

APPOINTMENT OF CONCILIATORS

Article 5

For the appointment of conciliators the parties shall take into account the system of investigation and conciliation established in accordance with General Assembly resolution 268 D (III) of 28 April 1949 and any other similar system established by a regional body in which both parties participate.

Article 6

If the parties have agreed that a sole conciliator shall be appointed, that conciliator shall be appointed by agreement between them. If such an agreement is not reached within two months, the conciliator shall be appointed by the government of a third State, chosen by agreement between the parties or, if no such agreement is reached within two months, by the President of the International Court of Justice. If the President is a national of one of the parties, the appointment shall be made by the Vice-President or the next judge of the Court in order of seniority who is not a national of the parties. The conciliator shall not have the nationality of any of the parties, shall not reside habitually in their territory and shall not be in the service of any of them.

Article 7

If the parties have agreed that three conciliators shall be appointed, each one of them shall appoint a conciliator who may be of their own nationality. The parties shall appoint the third conciliator, who may not be of the nationality of any of the parties or of the other conciliators. The third conciliator shall act as chairman of the commission. If he is not appointed within three months of the appointment of the conciliators appointed individually by the parties, the third conciliator shall be appointed by the government of a third State chosen by agreement between the parties or, if such agreement is not obtained within two months, by the President of the International Court of Justice. If the President is a national of one of the Parties, the appointment shall be made by the Vice-President or the next judge of the Court in order of seniority who is not a national of the parties. The third conciliator shall not reside habitually in the territory of the parties nor be in their service.

Article 8

If the parties have agreed that five conciliators should be appointed, each one of them shall appoint a conciliator who may be chosen from among their nationals. The other three conciliators, one of whom shall be chosen with a view to his acting as chairman, shall be appointed by agreement between the parties from among nationals of third States and shall be of different nationalities. None of them shall habitually reside in the territory of the parties or be in their service. None of them shall have the same nationality as that of the other two conciliators.

If the appointment of the conciliators whom the parties are to appoint jointly has not been effected within three months, they shall be appointed by the government of a third State chosen by agreement between the parties or, if such an agreement is not reached within three months, by the President of the International Court of Justice. If the President is a national of one of the parties, the appointment shall be made by the Vice-President or the next judge in order of seniority who is not a national of the parties.

Article 9

In the event that a sole conciliator dies, resigns or for any other reason is prevented from continuing to discharge his duties, a successor shall be appointed as soon as possible in the same way as the original conciliator was appointed. The vacancies which may occur in a conciliation commission as a result of death, resignation or any other cause shall be filled as soon as possible by the method established for appointing their replacements.

CHAPTER VI

RULES APPLICABLE TO CONCILIATION BY A SOLE CONCILIATOR

Article 10

The conciliator shall attempt to clarify the issues in dispute and to help the parties reach an agreement. He shall, where that is necessary to achieve this objective or where the dispute relates exclusively to issues of fact, and where he has been given the necessary powers for this purpose, seek to obtain, through investigation or any other means, any information which may be necessary or useful for him. If no settlement is reached during consideration of the dispute, the conciliator shall draw up and communicate to the parties such bases for a solution as he deems appropriate.

Article 11

1. After his appointment, the conciliator shall request each of the parties to submit to him a brief statement, in writing, describing the general nature of the dispute and the points at issue, accompanied by any information or evidence which the party considers necessary or useful. Each party shall send the other a copy of this statement.

2. The conciliator may request any of the parties to submit to him an additional statement, in writing, concerning its original statement and concerning the facts and grounds in support thereof, accompanied by any information or evidence which the party considers necessary or useful.

3. At any stage of the conciliation proceedings, the conciliator may request any of the parties to submit any other documents or information which he considers necessary or useful.

4. No minutes shall be kept of the meetings between the parties or between one of them and the conciliator, nor of the evidence submitted.

Article 12

1. The conciliator shall act in an independent and impartial manner in his efforts to achieve an amicable settlement of the dispute.

2. The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other factors, the rights and obligations of the parties and the facts and circumstances of the case.

3. The conciliator may conduct the proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including the desire of any one of them that he should hear oral statements and carry out investigations, and the need for a speedy settlement of the dispute.

4. At any stage of the proceedings, the conciliator may make proposals for a settlement of the dispute.

5. In putting forward proposals, the conciliator shall refrain from presenting any final conclusions with regard to the facts at issue or from ruling formally on issues of law, unless the parties have requested him to do so or, in the case of facts, the dispute is concerned exclusively with those facts.

Article 13

The work of the conciliator, including his meetings with the parties, which shall be private, shall be secret. The conciliator and the representatives of the parties shall refrain from divulging any documents or oral statements, or any communication concerning the progress of the proceedings, without the prior approval of both parties.

If any indiscretion occurs during the proceedings, the conciliator may determine its possible impact on the continuation of such proceedings.

The obligation to respect the secrecy of the proceedings shall remain in effect for the parties and for the conciliator after the proceedings are terminated and, in cases where the conciliator has successfully completed his work, shall even extend to the bases for a solution, unless the parties agree to authorize publication of all or some of the documents. When the conciliator has completed his work, the parties shall agree whether or not to authorize publication of all or some of the documents. Upon termination of the proceedings, the conciliator shall deposit a set of documents with each of the parties. The parties and the conciliator shall preserve the secrecy of the documents.

Article 14

If the parties have so agreed, the sole conciliator shall enjoy the powers granted to conciliation commissions by article 25 of these rules.

Article 15

If the dispute involves issues of fact and if the sole conciliator has not been granted the powers conferred on conciliation commissions by article 25 of these rules, he may, if in his judgement the lack of these powers has made it impossible for him to clarify the facts, refrain from reaching any conclusion as to the facts and from proposing bases for a solution to the parties. He shall inform the parties of the reasons why he has acted in this manner.

Article 16

The conciliator may, at any time, request the Secretary-General of the United Nations for advice and assistance with regard to the administrative and procedural aspects of his work.

Article 17

Without prejudice to the right of the parties and the conciliator to extend this deadline, the conciliator shall terminate his work within two months from the date on which the proceedings were initiated.

CHAPTER VII

RULES APPLICABLE TO CONCILIATION BY COMMISSION

Fundamental principles

Article 18

The commission shall attempt to clarify the issues in dispute and to help the parties reach an agreement. It shall, where that is necessary to achieve this objective or where the dispute relates exclusively to issues of fact, seek to obtain all necessary information through investigation or other means. If no settlement is reached during consideration of the dispute, the commission shall draw up and communicate to the parties, through its chairman, such bases for a solution as it deems appropriate.

Article 19

The commission shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties and the facts and circumstances of the case.

Procedures of the commission

Article 20

While adhering to the procedural provisions contained in these rules, the commission shall adopt its own procedures which must in all cases give the parties the right to a hearing.

Article 21

Before the commission begins its work, the parties shall designate their representatives and shall communicate the names of such representatives to the chairman of the commission. The chairman shall determine, in agreement with the parties, the place and date of the commission's first meeting, to which the members of the commission and the representatives of the parties shall be convoked.

Article 22

At its first meeting, the commission shall appoint a secretary and shall hear initial statements from the parties. If it decides that the information provided by the parties so permits, the commission shall agree on the method to be used to consider the dispute and, in particular, whether the parties should be invited to submit written allegations and in what order and within what deadlines such allegations must be submitted, as well as the dates when, if this is required, representatives and counsel will be heard. The decisions taken by the commission in this regard may be amended at any later stage of the proceedings.

Article 23

The representatives of the parties may be assisted by counsel and experts appointed by the parties.

Article 24

1. The parties shall facilitate the commission's work and, in particular, shall do everything possible to provide it with whatever documents and information may be relevant.

2. The commission shall accept any request by the parties that persons whose testimony they consider necessary or useful be heard, that experts be consulted or that local investigations be conducted. It may, however, in any case in which it considers it neither necessary nor useful to accept such a request, ask the party making the request to reconsider it.

3. The parties shall use the means available to them to enable the commission to enter their territory and, in accordance with their laws, to convoke and hear witnesses or experts and visit any part of their territory to conduct local investigations. Articles 19 to 29 of the Convention of The Hague on the Pacific Settlement of International Disputes of 18 October 1907 shall apply in such cases.

Article 25

If the commission establishes that the parties disagree on issues of fact, it may, ex officio, consult experts, conduct local investigations or question witnesses. In such cases, articles 19 to 29 of the Convention referred to in paragraph 3 of the preceding article shall apply.

Article 26

If the commission is unable to reach unanimous agreement, it may take its decisions by a majority of votes of its members without being required to indicate the number of votes. Except in matters of procedure, the presence of all members shall be required in order for a decision to be valid.

Article 27

1. Unless the parties agree otherwise, the commission shall meet at United Nations Headquarters.

2. The commission may, at any time, request the Secretary-General of the United Nations for advice or assistance with regard to the administrative and procedural aspects of its work.

Termination of the commission's work

Article 28

Without prejudice to the right of the parties and the commission to extend this deadline, the commission shall terminate its work within three months from the date of its first meeting if it consists of three members, and within five months of that date if it consists of five members.

Article 29

On terminating its consideration of the dispute, the commission shall attempt to define bases for a solution which are likely to be acceptable to the parties, unless the dispute involves issues of fact only. In this connection, the commission may hold an exchange of views with the representatives of the parties, who may be heard jointly or separately.

Once the proposed bases for a solution have been drawn up, they shall be communicated by the chairman of the commission to the representatives of the parties, with a request that representatives inform the commission, within a given period, as to whether the parties accept them. The chairman may accompany his communication with a written or oral statement of the reasons which, in the commission's view, might prompt the parties to accept the proposed bases for a

solution. The chairman shall refrain in such statement from presenting any final conclusions with regard to the facts at issue or from ruling formally on issues of law, unless the parties have asked the commission to do so or, in the case of facts, the dispute was concerned exclusively with those facts. In the latter instance, the chairman shall hand over to the parties, once it is complete, a report setting forth the commission's findings in that regard. The proceedings shall be terminated when this report is handed over.

Article 30

If the parties accept the proposed bases for a solution, a document shall be drawn up setting forth the terms of the settlement. The document should be signed by the chairman and the secretary and a copy thus signed shall be provided to each party.

Article 31

If one of the parties does not accept the bases for a solution and the commission agrees that further efforts to reach agreement on different bases are not justified, a document shall be drawn up as stipulated above, but omitting the proposed bases and indicating that the parties were unable to accept them.

Secrecy of the commission's work

Article 32

The commission's meetings shall be closed. Members of the commission and representatives shall refrain from divulging any documents or oral statements, or any communication concerning the progress of the proceedings, without the prior approval of both representatives.

If any indiscretion occurs during the proceedings, the commission may determine its possible impact on the continuation of such proceedings.

Article 33

No statement or communication made by the representatives of the parties or the members of the commission concerning the substance of the dispute shall be reflected in the minutes of meetings without the authorization of the representative or the commission member who made the statement or communication. On the other hand, written or oral reports by experts, reports on local investigations and statements by witnesses shall be annexed to the minutes of meetings unless the commission agrees otherwise in a specific case.

Article 34

Certified copies of the minutes of meetings and copies of the annexes thereto shall be provided to representatives through the secretary of the commission unless the commission agrees otherwise in a specific case.

Article 35

Except with regard to evidence drawn from experts' reports, local investigations or the questioning of witnesses, copies of the records of which must be provided to representatives, the obligation to respect the secrecy of the proceedings and of the deliberations shall remain in effect for the parties and for members of the commission after the proceedings are terminated and, in cases where the commission has successfully completed its conciliation work, shall even extend to the bases for a solution unless the parties agree to authorize publication of all or some of the documents. When the commission has completed its work, the parties shall agree whether or not to authorize publication of all or some of the documents. The commission may make recommendations to the parties in this connection.

Article 36

Upon termination of the proceedings, the chairman of the commission shall deposit the documents in the archives of a government or an international organization chosen by the parties, which may be the Secretariat of the Permanent Court of Arbitration. Within the limits indicated above, the depositary authority shall preserve the secrecy of the archives.

CHAPTER VIII

RULES APPLICABLE TO ALL CONCILIATION PROCEEDINGS CONDUCTED IN ACCORDANCE WITH THESE RULES

Article 37

No admission or proposal made or view expressed during the conciliation proceedings by one of the parties, the commission, a member of the commission or the sole conciliator, as the case may be, shall be considered likely to prejudge or in any way affect the rights or claims of any of the parties should the proceedings fail. Likewise, a party's acceptance of a proposed solution in no way implies acceptance by that party of the arguments of law or of fact on which the terms of the proposal may be based.

Article 38

Any of the parties to conciliation proceedings governed by these rules may provide the sole conciliator or the commission, as the case may be, with information on facts relating to the dispute, on the understanding that such information must be kept strictly confidential. The sole conciliator or the commission, as the case may be, shall not disclose such information to the other party or in any way reveal its existence either during or after the proceedings. If information is provided in writing, it shall be destroyed by the sole conciliator or the commission, as the case may be, when the proceedings are terminated.

Article 39

The parties undertake that no conciliator who takes part in proceedings conducted in conformity with these rules shall act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of the dispute that was the subject of the conciliation proceedings. The parties also undertake not to present the conciliator as a witness or expert in any such proceedings.

Article 40

Each party may at any moment, at his own initiative or at the initiative of the sole conciliator or the commission, as the case may be, make suggestions for the settlement of the dispute.

Article 41

Neither of the parties shall initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of the dispute which is the subject of the conciliation proceedings. Each party may, however, initiate arbitral or judicial proceedings where, in its opinion, such proceedings are necessary for preserving its rights.

Article 42

At any stage of the conciliation proceedings, the sole conciliator or the commission, as the case may be, may recommend any provisional measure which should be taken to preserve the corresponding rights of a party.

Article 43

At any stage of the proceedings, the sole conciliator or the commission, as the case may be, may draw the attention of the parties to any measures which might facilitate an amicable settlement.

Article 44

The parties undertake to refrain from any measure which might have an adverse affect on the bases for a solution proposed by the sole conciliator or the commission, as the case may be, and in general to refrain from any action which might aggravate or exacerbate the dispute.

Article 45

The sole conciliator or, if the conciliation proceedings are conducted by commission, each member of the commission, shall receive emoluments in an amount and on terms agreed by the parties who may, if they so wish, request the opinion of the Secretary-General of the United Nations on this matter. The emoluments and the terms of their payment must be fixed before the conciliators are appointed and be communicated to them before they take up office. The same rules apply to the emoluments of the secretary of the commission and any staff it recruits.

Article 46

The costs of the conciliation proceedings, including those occasioned by any investigations agreed upon by the commission or the conciliator, as the case may be, shall be borne by the parties, each contributing half of the total.

Article 47

The conclusions and proposals of the sole conciliator or the commission, as the case may be, shall in no way be binding on the parties with regard both to statements of fact and issues of law. They shall be simply recommendations submitted to the parties for consideration in order to facilitate an amicable settlement of the dispute.

APPENDIX II

Explanatory commentary on the application of the United Nations Rules for the Conciliation of Disputes between States

1. The rules in appendix I are a model set of norms which States between whom a dispute has arisen can adopt either through a bilateral agreement simply referring to the rules, if they wish to apply them without amendment, or otherwise through a bilateral agreement adopting an amended version of the rules. The rules are sufficiently broad to serve as a basis for conciliation proceedings without it being necessary to incorporate additional norms in them.

2. It is possible that States wishing to set up an ad hoc conciliation mechanism to assist them in settling a dispute between them may be parties to a bilateral or multilateral convention which requires them to resort to conciliation to settle disputes arising between them.

3. If the convention is bilateral, there is of course nothing to prevent the States from using the rules instead of the convention, without amending the rules, if the convention provides for ad hoc conciliation, in other words, if there is no pre-established conciliation body. If such a body does exist, they could, if they prefer to apply the rules rather than the convention establishing such a body, apply the rules with the necessary amendments so that the pre-established commission can handle the dispute.

4. If the pre-existing convention is multilateral, the States may act as indicated in the preceding paragraph, but taking into account the relevant provisions of the Vienna Convention on the Law of Treaties, article 41 of which requires them to inform other States parties to the convention in question that they have amended it in the light of their decision to apply the rules instead of the conciliation provisions in that convention.

5. If, as is the case with the Optional Protocols on the settlement of disputes which accompany the Vienna Conventions on diplomatic and consular relations (see article III (2) of each of those Conventions), the multilateral convention provides for conciliation but gives no indication of how it is to be conducted, there is obviously nothing to prevent the rules from being applied, thereby filling a gap, by making the necessary amendments to them so that the conciliation proceedings are in line with the provisions of the convention in this regard.

6. If the dispute prompting recourse to the rules comes within the terms of a clause of a bilateral or multilateral convention requiring the parties to resort to arbitration or to the International Court of Justice, or if the latter has competence to hear the dispute by virtue of declarations made under article 36, paragraph 2, of its Statute, States may normally agree that the dispute will none the less first be referred to conciliation on the basis of the rules, and that recourse to arbitration or to the Court will be required only if such conciliation proceedings fail.

7. The provisions of article 41 of the rules are relevant to the comments in the preceding paragraph.

8. Disputes between States, just as any other disputes, vary considerably in complexity and seriousness. As a result, while international practice in the area of conciliation has so far shown a preference for five-member commissions, it was thought that for minor disputes States might appoint a sole conciliator if the dispute is relatively unimportant and straightforward, or a commission of only three members if the dispute is more serious but not major. The five-member commission which the rules also envisage would be reserved for major disputes. This is also the rationale for the essentially oral proceedings which the rules envisage as the task of the sole conciliator, making it simpler than that of the commissions, and for the fact that, unlike the commissions, the sole conciliator has independent powers of investigation only if the parties have conferred such powers on him.